

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2487

To improve the economic conditions and supply of housing in Native American communities by creating the Native American Financial Services Organization, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 12), 1994

Mr. CAMPBELL (for himself, Mr. INOUE, and Mr. MCCAIN) (by request) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To improve the economic conditions and supply of housing in Native American communities by creating the Native American Financial Services Organization, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Native American Financial Services Organization Act of  
6       1994”.

7       (b) TABLE OF CONTENTS.—The table of contents for  
8       this Act is as follows:

Sec. 1. Short title.

#### TITLE I—STATEMENT OF POLICY; DEFINITIONS

Sec. 101. Policy.

Sec. 102. Statement of purposes.

Sec. 103. Definitions.

#### TITLE II—NATIVE AMERICAN FINANCIAL SERVICES ORGANIZATION

Sec. 201. Establishment of the organization.

Sec. 202. Authorized assistance and service functions.

Sec. 203. Native American lending services grant.

Sec. 204. Audits.

Sec. 205. Annual housing and economic development reports.

Sec. 206. Advisory council.

#### TITLE III—CAPITALIZATION OF ORGANIZATION

Sec. 301. Capitalization of the organization.

Sec. 302. Obligations and securities of the organization.

Sec. 303. Limit on total assets and liabilities.

#### TITLE IV—REGULATION, EXAMINATION, AND REPORTS

Sec. 401. Regulation, examination, and reports—OFHEO.

Sec. 402. Regulation of the secretary of HUD.

#### TITLE V—FORMATION OF NEW CORPORATION

Sec. 501. Formation of new corporation.

Sec. 502. Adoption and approval of merger plan.

Sec. 503. Consummation of merger.

Sec. 504. Transition.

Sec. 505. Effect of merger.

#### TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

Sec. 601. Authorization of appropriations for Native American financial institutions.

Sec. 602. Authorization of appropriations for organization.

## 1           **TITLE I—STATEMENT OF** 2           **POLICY; DEFINITIONS**

### 3   **SEC. 101. POLICY.**

4           Based upon the findings and recommendations by the  
5 Commission on American Indian, Alaska Native and Na-  
6 tive Hawaiian Housing established by Public Law 101-  
7 235, the Congress has determined that housing shortages

1 and deplorable living conditions are at crisis proportions  
2 in Native American communities throughout the United  
3 States. The lack of private capital to finance housing and  
4 economic development for Native Americans and Native  
5 American communities seriously exacerbates this problem.  
6 To begin to address this crisis, it is the policy of the  
7 United States to improve the economic conditions and sup-  
8 ply of housing in Native American communities through-  
9 out the United States by creating the Native American  
10 Financial Services Organization. It is anticipated that  
11 when the Native American Financial Services Organiza-  
12 tion is no longer a Congressionally chartered body cor-  
13 porate, it will function as a tribal, state or District of Co-  
14 lumbia corporation.

15 **SEC. 102. STATEMENT OF PURPOSES.**

16 The purposes of this Act are—

17 (1) to help serve the mortgage and other lend-  
18 ing needs of Native Americans by assisting in the es-  
19 tablishment and organization of Native American  
20 Financial Institutions, developing and providing fi-  
21 nancial expertise and technical assistance to Native  
22 American Financial Institutions, including assist-  
23 ance on how to overcome barriers to lending on Na-  
24 tive American lands, and the past and present im-  
25 pact of discrimination;

1           (2) to promote access to mortgage credit in Na-  
2       tive American communities in the Nation by increas-  
3       ing the liquidity of financing for housing and im-  
4       proving the distribution of investment capital avail-  
5       able for such financing, primarily through Native  
6       American Financial Institutions;

7           (3) to promote the infusion of public capital  
8       into Native American communities throughout the  
9       United States and to direct sources of public and  
10      private capital into housing and economic develop-  
11      ment for Native American individuals and families,  
12      primarily through Native American Financial Insti-  
13      tutions; and

14          (4) to provide ongoing assistance to the second-  
15      ary market for residential mortgages and economic  
16      development loans for Native American individuals  
17      and families, Native American Financial Institu-  
18      tions, and other borrowers by increasing the liquidity  
19      of such investments and improving the distribution  
20      of investment capital available for such financing.

21   **SEC. 103. DEFINITIONS.**

22      For purposes of this Act, the following definitions  
23   shall apply:

1           (1) The term “Alaska Native” means any per-  
2       son recognized as an Alaska Native by the Federal  
3       Government.

4           (2) The term “Board of Directors” means the  
5       board of directors of the Organization.

6           (3) The term “Chairperson” means the chair-  
7       person of the Board of Directors.

8           (4) The term “designated merger date” means  
9       the specific calendar date and time of day des-  
10      ignated by the Board of Directors under section  
11      502(b).

12          (5) The term “Fund” means the Community  
13      Development Financial Institutions Fund established  
14      by the Community Development Banking and Fi-  
15      nancial Institutions Act of 1994.

16          (6) The term “Indian Tribe” means any Indian  
17      tribe, band, nation, or other organized group or com-  
18      munity, including any Alaska Native village or re-  
19      gional or village corporation as defined in or estab-  
20      lished pursuant to the Alaska Native Claims Settle-  
21      ment Act which is recognized as eligible for the spe-  
22      cial programs and services provided by the United  
23      States to Indians because of their status as Indians.

1           (7) The term “merger plan” means the plan of  
2 merger adopted by the Board of Directors according  
3 the section 502(a).

4           (8) The term “Native American” means any  
5 member of an Indian Tribe. The term “Native  
6 American Financial Institution” means a person  
7 (other than an individual) that—

8           (A) qualifies as a “community development  
9 financial institution” under the Community De-  
10 velopment Banking and Financial Institutions  
11 Act of 1994;

12           (B) satisfies the requirements established  
13 by the Community Development Banking and  
14 Financial Institutions Act of 1994 and the  
15 Fund for applicants for assistance from the  
16 Fund;

17           (C) demonstrates a special interest and ex-  
18 pertise in serving the primary economic develop-  
19 ment and mortgage lending needs of the Native  
20 American community; and

21           (D) demonstrates that it has the endorse-  
22 ment of the Native American community it in-  
23 tends to serve.

24           (9) The term “Native American lender” means  
25 a Native American Financial Institution, Native

1 American governing body, Native American housing  
2 authority or other Native American financial institu-  
3 tion which acts as a primary mortgage or economic  
4 development lender in a Native American commu-  
5 nity.

6 (10) The term “new corporation” means the  
7 corporation formed according to section 501.

8 (11) The term “nonqualifying mortgage loan”  
9 means a mortgage loan deemed by the Organization  
10 to be of such quality, type, class or principal amount  
11 as to not meet the purchase standards of the Fed-  
12 eral National Mortgage Association or the Federal  
13 Home Loan Mortgage Corporation in effect on Sep-  
14 tember 30, 1994.

15 (12) The term “Organization” means the Na-  
16 tive American Financial Services Organization.

17 (13) The term “qualifying mortgage loan”  
18 means a mortgage loan deemed by the Organization  
19 to be of such quality, type, class or principal amount  
20 as to meet the purchase standards of the Federal  
21 National Mortgage Association or the Federal Home  
22 Loan Mortgage Corporation in effect on September  
23 30, 1994.

24 (14) The term “transition period” means the  
25 period of time between the approval of the merger

1 plan by both the Secretary of Housing and Urban  
2 Development and the Secretary of the Treasury and  
3 the designated merger date.

4 **TITLE II—NATIVE AMERICAN FI-**  
5 **NANCIAL SERVICES ORGANI-**  
6 **ZATION**

7 **SEC. 201. ESTABLISHMENT OF THE ORGANIZATION.**

8 (a) CREATION; BOARD OF DIRECTORS; POLICIES;  
9 PRINCIPAL OFFICE; MEMBERSHIP; VACANCIES.—

10 (1) There is established and chartered a body  
11 corporate to be known as the Native American Fi-  
12 nancial Services Organization (“Organization”). The  
13 Organization shall have existence as a Congression-  
14 ally chartered body corporate until the designated  
15 merger date, at which time its charter shall termi-  
16 nate, unless such charter is earlier surrendered by  
17 the Organization. The right to revise, amend or  
18 modify the Organization charter is specifically and  
19 exclusively reserved to the Congress.

20 (2) The powers of the Organization shall be  
21 vested in a Board of Directors. The Board of Direc-  
22 tors shall determine the policies that govern the op-  
23 erations and management of the Organization. The  
24 principal office of the Organization shall be in the  
25 District of Columbia. For purposes of venue, Orga-



1 nization shall be considered a resident of the District  
2 of Columbia.

3 (3)(A) The Board of Directors of the Organiza-  
4 tion shall consist of nine persons, three of whom  
5 shall be appointed by the President of the United  
6 States to serve at the President's pleasure and six  
7 of whom shall be elected by the class A stockholders,  
8 all in accordance with the bylaws of the Organiza-  
9 tion. If class B stock is issued under section 301(b),  
10 the Board of Directors shall consist of 13 persons,  
11 and the four additional members shall be elected by  
12 the class B stockholders in accordance with the by-  
13 laws of the Organization. Each member of the  
14 Board of Directors shall be elected or appointed for  
15 a term of four years, except that the members of the  
16 initial Board of Directors shall have the following  
17 terms: of the three members appointed by the Presi-  
18 dent, one will have a two-year term, one will have a  
19 three-year term, and one will have a four-year term,  
20 all as designated by the President at the time of  
21 their appointments; of the six members elected by  
22 the class A stockholders, two will have two-year  
23 terms, two will have three-year terms, and the re-  
24 maining two will have four- year terms; and if class  
25 B stock is issued and four additional members are

1       elected by the class B stockholders, one will have a  
2       two-year term, one will have a three-year term, and  
3       the remaining two will have four-year terms. All  
4       members appointed by the President shall have ex-  
5       pertise in one or more of the following areas: Native  
6       American housing and economic development pro-  
7       grams, financing in Native American communities,  
8       Native American governing bodies and court sys-  
9       tems, restricted and trust land issues, economic de-  
10      velopment, and small consumer loans.

11           (B) The Board of Directors shall select a  
12      Chairperson from among its members, except that  
13      the initial Chairperson shall be selected from among  
14      the members of the initial Board of Directors who  
15      have been appointed or elected to four-year terms.

16           (C)(i) Any appointed directorship that becomes  
17      vacant shall be filled by appointment by the Presi-  
18      dent of the United States, but only for the unexpired  
19      portion of the term.

20           (ii) Any elected directorship that becomes va-  
21      cant shall be filled by appointment by the Board of  
22      Directors, but only for the unexpired portion of the  
23      term.

24           (D) Any member of the Board of Directors may  
25      continue to serve after the expiration of the term of

1 office to which the director was appointed or elected  
2 until a successor has been appointed or elected, and  
3 qualified.

4 (b) POWERS OF THE ORGANIZATION.—The Organi-  
5 zation shall have power—

6 (1) to adopt, alter, and use a corporate seal;

7 (2) to adopt bylaws, consistent with this Act,  
8 regulating, among other things, the manner in  
9 which—

10 (A) the business of the Organization shall  
11 be conducted;

12 (B) the elected directors of the Organiza-  
13 tion shall be elected;

14 (C) the stock of the Organization shall be  
15 issued, held, and disposed of;

16 (D) the property of the Organization shall  
17 be disposed of; and,

18 (E) the powers and privileges granted to  
19 the Organization by this Act and other law  
20 shall be exercised and enjoyed;

21 (3) to make and perform contracts, agreements,  
22 and commitments, including entering into a coopera-  
23 tive agreement with the Fund;

24 (4) to prescribe and impose fees and charges  
25 for services provided by the Organization;

1           (5) to settle, adjust, and compromise, and with  
2           or without consideration or benefit to the Organiza-  
3           tion to release or waive in whole or in part, in ad-  
4           vance or otherwise, any claim, demand, or right of,  
5           by, or against the Organization, provided that such  
6           settlement, adjustment, compromise, release or waiv-  
7           er shall not be adverse to the interests of the United  
8           States;

9           (6) to sue and be sued, complain and defend, in  
10          any tribal, State, Federal, or other court;

11          (7) to acquire, take, hold, and own, and to deal  
12          with and dispose of any property;

13          (8) to determine its necessary expenditures and  
14          the manner in which the same shall be incurred, al-  
15          lowed, and paid, and appoint, employ, and fix and  
16          provide for the compensation and benefits of offi-  
17          cers, employees, attorneys, and agents as the Board  
18          of Directors determines reasonable and not incon-  
19          sistent with the provisions this section;

20          (9) to incorporate a new corporation under  
21          State, District of Columbia or tribal law, as provided  
22          in section 501;

23          (10) to adopt a plan of merger, as provided in  
24          section 502;

1           (11) to consummate the merger of the Organi-  
2           zation into the new corporation, as provided in sec-  
3           tion 503; and

4           (12) to have succession until the designated  
5           merger date or any earlier date on which the Orga-  
6           nization surrenders its Federal charter.

7           (c) INVESTMENT OF FUNDS; DESIGNATION AS DE-  
8           POSITARY, CUSTODIAN, OR AGENT FOR ORGANIZATION OF  
9           ANY FEDERAL RESERVE BANK, FEDERAL HOME LOAN  
10          BANK, OR ANY BANK DESIGNATED AS DEPOSITARY OF  
11          PUBLIC MONEY.—Moneys of the Organization not re-  
12          quired to meet current operating expenses shall be in-  
13          vested in obligations of, or obligations guaranteed by, the  
14          United States or any agency thereof, or in obligations,  
15          participations or other instruments that are lawful invest-  
16          ments for fiduciary, trust or public funds. Any Federal  
17          Reserve bank or Federal home loan bank, or any bank  
18          as to which at the time of its designation by the Organiza-  
19          tion there is outstanding a designation by the Secretary  
20          of the Treasury as a general or other depositary of public  
21          money, may be designated by the Organization as a depos-  
22          itary or custodian or as a fiscal or other agent of the Orga-  
23          nization, and is hereby authorized to act as such deposi-  
24          tary, custodian, or agent.

1 (d) ACTIONS BY AND AGAINST THE ORGANIZATION;  
2 JURISDICTION; REMOVAL OF ACTIONS; ATTACHMENT OR  
3 EXECUTION ISSUED AGAINST THE ORGANIZATION.—Not-  
4 withstanding section 1349 of title 28 of the United States  
5 Code or any other provision of law—

6 (1) the Organization shall be deemed to be an  
7 agency included in sections 1345 and 1442 of such  
8 title 28;

9 (2) all civil actions to which the Organization is  
10 a party shall be deemed to arise under the laws of  
11 the United States, and the district courts of the  
12 United States shall have original jurisdiction of all  
13 such actions, without regard to amount or value;  
14 and

15 (3) any civil or other action, case or controversy  
16 in a tribal court, court of a State, or in any court  
17 other than a district court of the United States, to  
18 which the Organization is a party may at any time  
19 before the trial thereof be removed by the Organiza-  
20 tion, without the giving of any bond or security, to  
21 the district court of the United States for the dis-  
22 trict and division embracing the place where the  
23 same is pending, or, if there is no such district  
24 court, to the district court of the United States for  
25 the District of Columbia, by following any procedure

1 for removal of causes in effect at the time of that  
2 removal.

3 **SEC. 202. AUTHORIZED ASSISTANCE AND SERVICE FUNC-**  
4 **TIONS.**

5 (a) TECHNICAL ASSISTANCE AND SERVICES.—The  
6 Organization is authorized to—

7 (1) assist the Fund in the establishment and  
8 organization of Native American Financial Institu-  
9 tions;

10 (2) assist the Fund in developing and providing  
11 financial expertise and technical assistance to Native  
12 American Financial Institutions, including methods  
13 of underwriting, securing, servicing, packaging, and  
14 selling mortgage and small commercial and  
15 consumer loans;

16 (3) develop and provide specialized technical as-  
17 sistance on how to overcome barriers to primary  
18 mortgage lending on Native American lands, includ-  
19 ing issues related to trust lands, discrimination, high  
20 operating costs, and inapplicability of standard un-  
21 derwriting criteria;

22 (4) assist the Fund in providing mortgage un-  
23 derwriting assistance (but not originate loans) under  
24 contract to Native American Financial Institutions;

1           (5) work with the Federal National Mortgage  
2       Association, the Federal Home Loan Mortgage Cor-  
3       poration, and other participants in the secondary  
4       market for home mortgage instruments in identify-  
5       ing and eliminating barriers to their purchase of Na-  
6       tive American mortgage loans originated by Native  
7       American Financial Institutions and other lenders in  
8       Native American communities;

9           (6) obtain capital investments in the Organiza-  
10      tion from Indian tribes, Native American organiza-  
11      tions, and others;

12          (7) assist the Fund in its operation as an infor-  
13      mation clearinghouse, providing information on fi-  
14      nancial practices to Native American Financial In-  
15      stitutions; and

16          (8) assist the Fund in monitoring and reporting  
17      to the Congress on the performance of Native Amer-  
18      ican Financial Institutions in meeting the economic  
19      development and housing credit needs of Native  
20      Americans.

21      (b) PURCHASES AND SALES OF MORTGAGES AND  
22      MORTGAGE-BACKED SECURITIES.—In the event that the  
23      Secretary of Housing and Urban Development determines  
24      that the combined purchases by the Federal National  
25      Mortgage Association and the Federal Home Loan Mort-



1 gage Corporation of residential one to four family Native  
2 American nonqualifying mortgage loans originated by Na-  
3 tive American Financial Institutions and other lenders—

4 (1) in the second year following the establish-  
5 ment of the Organization total less than  
6 \$20,000,000, unless it can be demonstrated to the  
7 Secretary of Housing and Urban Development that  
8 such purchase goal could not be met; or

9 (2) in any succeeding year, total less than that  
10 amount which the Secretary of Housing and Urban  
11 Development has determined and published as a rea-  
12 sonable Native American mortgage purchase goal for  
13 such combined purchases by the Federal National  
14 Mortgage Association and the Federal Home Loan  
15 Mortgage Corporation in such year; the Organiza-  
16 tion shall thereafter be permitted to make such pur-  
17 chases. In determining such goal, the Secretary shall  
18 take into account the Fund's study of Native Amer-  
19 ican lending and investment required by the Com-  
20 munity Development Banking and Financial Institu-  
21 tions Act of 1994. The Organization, upon receiving  
22 written confirmation from the Secretary of Housing  
23 and Urban Development, is thereafter authorized,  
24 without restriction as to time, to—

1 (A) with respect to residential mortgage  
2 loans originated by Native American Financial  
3 Institutions which are qualifying mortgage  
4 loans—

5 (i) purchase such qualifying mortgage  
6 loans;

7 (ii) hold such qualifying mortgage  
8 loans for a period of time not to exceed 12  
9 months; and

10 (iii) resell such qualifying mortgage  
11 loans to the Federal National Mortgage  
12 Association, the Federal Home Loan Mort-  
13 gage Corporation or other secondary mar-  
14 ket participants, as provided in section  
15 303(b);

16 (B) with respect to residential mortgage  
17 loans originated by the Native American Finan-  
18 cial Institutions which are nonqualifying mort-  
19 gage loans—

20 (i) purchase such nonqualifying mort-  
21 gage loans from the Native American Fi-  
22 nancial Institutions for such term as the  
23 Organization deems appropriate including  
24 the life of the mortgage loan, provided  
25 that—

1 (I) the Organization has reason-  
2 able assurance that the loan will be  
3 repaid within the time agreed;

4 (II) the Native American Finan-  
5 cial Institution selling the loan retains  
6 a participation of not less than 10 per  
7 centum in the mortgage;

8 (III) the Native American Finan-  
9 cial Institution selling the loan agrees  
10 for such period of time and under  
11 such circumstances as the Organiza-  
12 tion may require, to repurchase or re-  
13 place the mortgage upon demand of  
14 the Organization in the event that the  
15 loan is in default; or

16 (IV) that portion of the outstand-  
17 ing principal balance of the loan  
18 which exceeds 80 per centum of the  
19 value of the property securing such  
20 loan is guaranteed or insured by a  
21 qualified insurer as determined by the  
22 Organization;

23 (ii) issue mortgage-backed securities  
24 or other forms of participations based on

1 pools of such nonqualifying mortgage  
2 loans, as provided in section 303(c);

3 (C) to purchase, service, sell, lend on the  
4 security of, and otherwise deal in—

5 (i) residential mortgages that are se-  
6 cured by a subordinate lien against a one-  
7 or four-family residence that is the prin-  
8 cipal residence of the mortgagor; and

9 (ii) residential mortgages that are se-  
10 cured by a subordinate lien against a prop-  
11 erty comprising five or more family dwell-  
12 ing units; and

13 (D) rights and remedies of the Organiza-  
14 tion, including without limitation on the gener-  
15 ality of the foregoing any rights and remedies  
16 of the Organization on, under, or with respect  
17 to any mortgage or any obligation secured  
18 thereby, shall be immune from impairment, lim-  
19 itation, or restriction by or under—

20 (i) any law (except laws enacted by  
21 the Congress expressly in limitation of this  
22 sentence) which becomes effective after the  
23 acquisition by the Organization of the sub-  
24 ject or property on, under, or with respect  
25 to which such right or remedy arises or ex-

1           ists or would so arise or exist in the ab-  
2           sence of such law; or

3           (ii) any administrative or other action  
4           which becomes effective after such acquisi-  
5           tion. The Organization is authorized to  
6           conduct its business without regard to any  
7           qualification or similar statute in the Dis-  
8           trict of Columbia, or any State or tribal ju-  
9           risdiction.

10 **SEC. 203. NATIVE AMERICAN LENDING SERVICES GRANT.**

11       To the extent funds are available as provided in sec-  
12       tion 602, and the Fund and the Organization enter into  
13       a cooperative agreement for the Organization to provide  
14       technical assistance and other services to Native American  
15       Financial Institutions, such agreement shall provide that  
16       the initial grant payment, anticipated to be \$5,000,000,  
17       shall be made when the initial Organization Board of Di-  
18       rectors takes office. The payment of the balance of  
19       \$5,000,000 shall be made to the Organization not later  
20       than one year from the date of the initial grant payment.

21 **SEC. 204. AUDITS.**

22       (a) INDEPENDENT AUDITS.—

23           (1) The Organization shall have an annual  
24       independent audit made of its financial statements

1 by an independent public accountant in accordance  
2 with generally accepted auditing standards.

3 (2) In conducting an audit under this sub-  
4 section, the independent public accountant shall de-  
5 termine and report on whether the financial state-  
6 ments of the Organization—

7 (A) are presented fairly in accordance with  
8 generally accepted accounting principles; and

9 (B) to the extent determined necessary by  
10 the Director of the Office of Federal Housing  
11 Enterprise Oversight of the Department of  
12 Housing and Urban Development, comply with  
13 any disclosure requirements imposed under sec-  
14 tion 401.

15 (b) GAO AUDITS.—

16 (1) Beginning after the first two years of the  
17 Organization's operation, unless earlier required by  
18 any other statute, grant or agreement, the pro-  
19 grams, activities, receipts, expenditures, and finan-  
20 cial transactions of the Organization shall be subject  
21 to audit by the Comptroller General of the United  
22 States under such rules and regulations as may be  
23 prescribed by the Comptroller General.

24 (2) To carry out this subsection, the represent-  
25 atives of the General Accounting Office shall have

1 access to all books, accounts, financial records, re-  
2 ports, files and all other papers, things, or property  
3 belonging to or in use by the Organization and nec-  
4 essary to facilitate the audit, and they shall be af-  
5 farded full facilities for verifying transactions with  
6 the balances or securities held by depositaries, fiscal  
7 agents, and custodians. The representatives of the  
8 General Accounting Office shall also have access,  
9 upon request to the Organization or any auditor for  
10 an audit of the Organization under subsection (a),  
11 to any books, accounts, financial records, reports,  
12 files, or other papers, things, or property belonging  
13 to or in use by the Organization and used in any  
14 such audit and to any papers, records, files, and re-  
15 ports of the auditor used in such an audit.

16 (3) A report on each such audit shall be made  
17 by the Comptroller General to the Congress.

18 (4) The Organization shall reimburse the Gen-  
19 eral Accounting Office for the full cost of any such  
20 audit as billed therefor by the Comptroller General.

21 **SEC. 205. ANNUAL HOUSING AND ECONOMIC DEVELOP-**  
22 **MENT REPORTS.**

23 The Organization shall collect, maintain, and provide  
24 to the Secretary of Housing and Urban Development, in  
25 a form determined by the Secretary, such data relating

1 to its mortgages on housing consisting of one to four  
2 dwelling units and of more than four dwelling units and  
3 to its activities relating to economic development as the  
4 Secretary deems appropriate.

5 **SEC. 206. ADVISORY COUNCIL.**

6 (a) ESTABLISHMENT.—The Board of Directors shall  
7 establish an Advisory Council.

8 (b) MEMBERSHIP.—The Advisory Council shall con-  
9 sist of 13 members, 1 representative from each of the 12  
10 districts established by the Bureau of Indian Affairs and  
11 one from Hawaii. Each member shall be appointed by the  
12 Board of Directors. No fewer than six of the members of  
13 the Advisory Council shall have financial expertise. No  
14 fewer than nine of the Advisory Council shall be Native  
15 Americans. Each member shall be appointed for a term  
16 of four years; except that the initial council shall be ap-  
17 pointed as follows: four members will have a two-year  
18 term, four members will have a three- year term, and the  
19 remaining five members will have a four-year term, all as  
20 designated by the Board of Directors at the time of their  
21 appointments.

22 (c) DUTIES.—The Advisory Council shall advise the  
23 Board of Directors on all policy matters of the Organiza-  
24 tion. Through the regional representation of its members,



1 the Council shall provide information to the Board from  
2 all sectors of the Native American community.

3 **TITLE III—CAPITALIZATION OF**  
4 **ORGANIZATION**

5 **SEC. 301. CAPITALIZATION OF THE ORGANIZATION.**

6 (a) CLASS A STOCK.—The class A stock of the Orga-  
7 nization shall be issued to Indian Tribes. The allocation  
8 shall be by population as determined by the Secretary of  
9 Housing and Urban Development in consultation with the  
10 Secretary of the Interior. The class A stock shall have  
11 such par value and other characteristics as the Organiza-  
12 tion provides. The class A stock shall be vested with voting  
13 rights, each share being entitled to 1 vote. The class A  
14 stock is nontransferable only and it shall be surrendered  
15 to the Organization in the event the holder is no longer  
16 recognized as an Indian Tribe under this Act.

17 (b) CLASS B STOCK.—The Organization is author-  
18 ized to issue class B stock evidencing capital contributions  
19 in the manner and amount, and subject to any limitations  
20 on concentration of ownership, as may be established by  
21 the Organization. When authorized to be issued, the class  
22 B stock shall be available for purchase by investors, and  
23 shall be entitled to such dividends as may be declared by  
24 the Board of Directors in accordance with subsection (c).  
25 The class B stock shall have such par value and other

1 characteristics as the Organization provides. The class B  
2 stock shall be vested with voting rights, each share being  
3 entitled to 1 vote. The class B stock is transferable only  
4 on the books of the Organization.

5 (c) CHARGES AND FEES; EARNINGS.—

6 (1) The Organization may impose charges or  
7 fees, which may be regarded as elements of pricing,  
8 with the objective that all costs and expenses of the  
9 operations of the Organization should be within its  
10 income derived from such operations and that such  
11 operations would be fully self-supporting.

12 (2) All earnings from the operations of the Or-  
13 ganization shall be annually transferred to the gen-  
14 eral surplus account of the Organization. At any  
15 time, funds in the general surplus account may, in  
16 the discretion of the Board of Directors, be trans-  
17 ferred to reserves.

18 (d) CAPITAL DISTRIBUTIONS.—

19 (1) Except as provided in paragraph (2), the  
20 Organization may make such capital distributions  
21 (as such term is defined in section 1303 of the Fed-  
22 eral Housing Financial Safety and Soundness Act of  
23 1992) as may be declared by the Board of Directors.  
24 All capital distributions shall be charged against the  
25 general surplus account of the Organization.

1           (2) The Organization may not make any capital  
2       distribution that would decrease the total capital (as  
3       such term is defined in section 1303 of the Federal  
4       Housing Financial Safety and Soundness Act of  
5       1992) of the Organization to an amount less than  
6       the capital level for the Organization established  
7       under section 401, without prior written approval of  
8       the distribution by the Director of the Office of Fed-  
9       eral Housing Enterprise Oversight of the Depart-  
10      ment of Housing and Urban Development.

11 **SEC. 302. OBLIGATIONS AND SECURITIES OF THE ORGANI-**  
12 **ZATION.**

13       (a) OBLIGATIONS.—The Organization is authorized  
14 to borrow money, to give security, to pay interest or other  
15 return, and to issue upon the approval of the Secretary  
16 of the Treasury, notes, debentures, bonds, or other obliga-  
17 tions having maturities and bearing such rate or rates of  
18 interest as may be determined by the Organization with  
19 the approval of the Secretary of the Treasury, provided  
20 that such borrowing and issuing of obligations qualifies  
21 as a transaction by an issuer not involving any public of-  
22 fering under section 4(2) of the Securities Act of 1933.  
23 Obligations issued by the Organization under this section  
24 shall not be obligations of, nor shall payment of the prin-  
25 cipal of or interest on such obligations be guaranteed by,

1 the United States or any agency thereof, and the obliga-  
2 tions shall so plainly state.

3 (b) RESALES OF QUALIFYING MORTGAGE LOANS.—

4 The sale or other disposition by the Organization of quali-  
5 fying mortgage loans under section 202(b)(1) shall be  
6 upon such terms and conditions relating to resale, repur-  
7 chase, substitution, replacement or otherwise as the Orga-  
8 nization may prescribe, except that the Organization may  
9 not guarantee or insure the payment of any mortgage loan  
10 sold under section 202(b)(1).

11 (c) SECURITIES BACKED BY NONQUALIFYING MORT-

12 GAGE LOANS.—Securities in the form of debt obligations  
13 or trust certificates of beneficial interest, or both, and  
14 based upon nonqualifying mortgage loans held and set  
15 aside by the Organization under section 202(b)(2), may  
16 be issued upon the approval of the Secretary of the Treas-  
17 ury and shall have such maturities and shall bear such  
18 rate or rates of interest as may be determined by the Or-  
19 ganization with the approval of the Secretary of the Treas-  
20 ury provided that such issuing of securities qualifies as  
21 a transaction by an issuer not involving any public offering  
22 under section 4(2) of the Securities Act of 1933.

23 (d) PROHIBITIONS AND RESTRICTIONS; CREATION  
24 OF LIENS AND CHARGES; RANK AND PRIORITY; CAUSES  
25 OF ACTION TO ENFORCE; JURISDICTION; SERVICE OF

1 PROCESS.—The Organization may, by regulation or by  
2 writing executed by the Organization, establish prohibi-  
3 tions or restrictions upon the creation of indebtedness or  
4 obligations of the Organization or of liens or charges upon  
5 property of the Organization, including after-acquired  
6 property, and create liens and charges, which may be  
7 floating liens or charges, upon all or any part or parts  
8 of the property of the Organization, including after-ac-  
9 quired property. Such prohibitions, restrictions, liens, and  
10 charges shall have such effect, including without limitation  
11 on the generality of the foregoing such rank and priority,  
12 as may be provided by regulations of the Organization or  
13 by writings executed by the Organization, and shall create  
14 causes of action which may be enforced by action in the  
15 United States District Court for the District of Columbia  
16 or in the United States district court for any judicial dis-  
17 trict in which any of the property affected is located. Proc-  
18 ess in any such action may run to and be served in any  
19 judicial district or any place subject to the jurisdiction of  
20 the United States.

21 (e) VALIDITY OF PROVISIONS; VALIDITY OF RE-  
22 STRICTIONS, PROHIBITIONS, LIENS, OR CHARGES.—The  
23 provisions of this section and of any restriction, prohibi-  
24 tion, lien, or charge referred to in subsection (b) shall be  
25 fully effective notwithstanding any other law, including

1 without limitation on the generality of the foregoing any  
 2 law of or relating to sovereign immunity or priority.

3 **SEC. 303. LIMIT ON TOTAL ASSETS AND LIABILITIES.**

4 The aggregate of—

5 (1) the total equity of the Organization, includ-  
 6 ing all capital from any issuance of class B stock;  
 7 and

8 (2) the total liabilities of the Organization, in-  
 9 cluding all obligations issued or incurred by the Or-  
 10 ganization,

11 shall not at any time exceed \$20,000,000.

12 **TITLE IV—REGULATION,**  
 13 **EXAMINATION, AND REPORTS**

14 **SEC. 401. REGULATION, EXAMINATION, AND REPORTS—**  
 15 **OFHEO.**

16 (a) EFFECTIVE DATE OF SECTION.—The provisions  
 17 of this section shall be effective on the date the Secretary  
 18 of Housing and Urban Development makes the determina-  
 19 tion in accordance with the provisions of section 202(b),  
 20 that the Organization is authorized to purchase and sell  
 21 mortgages and mortgage backed securities.

22 (b) IN GENERAL.—The Organization shall be subject  
 23 to the regulatory authority of the Office of Federal Hous-  
 24 ing Enterprise Oversight of the Department of Housing  
 25 and Urban Development with respect to all matters relat-

1 ing to the financial safety and soundness of the Organiza-  
2 tion.

3 (c) DUTY OF DIRECTOR OF OFHEO.—The duty of  
4 the Director of the Office of Federal Housing Enterprise  
5 Oversight shall be to ensure that the Organization is ade-  
6 quately capitalized and operating safely as a Congression-  
7 ally chartered body corporate.

8 (d) POWERS OF DIRECTOR OF OFHEO.—The Direc-  
9 tor of the Office of Federal Housing Enterprise Oversight  
10 shall have all of the exclusive powers granted the Director  
11 under section 1313 (b), (d), and (e) of the Housing and  
12 Community Development Act of 1992, as determined by  
13 the Director to be necessary or appropriate to regulate the  
14 operations of the Organization.

15 (e) REPORTS TO DIRECTOR OF OFHEO.—

16 (1) The Organization shall submit to the Direc-  
17 tor of the Office of Federal Housing Enterprise  
18 Oversight annual reports of the financial condition  
19 and operations of the Organization which shall be in  
20 such form, contain such information, and be submit-  
21 ted on such dates as the Director shall require.

22 (2) The Organization shall also submit to the  
23 Director any other reports required by the Director  
24 pursuant to section 1314 of the Housing and Com-  
25 munity Development Act of 1992.

1           (3) Each report shall contain a declaration by  
2           the president, vice president, treasurer, or any other  
3           officer designated by the Board of Directors of the  
4           Organization to make such declaration, that the re-  
5           port is true and correct to the best of such officer's  
6           knowledge and belief.

7           (f) FUNDING OFHEO OVERSIGHT.—

8           (1) The Director of the Office of Federal Hous-  
9           ing Enterprise Oversight shall assess and collect  
10          from the Organization such amounts as are nec-  
11          essary to reimburse the Office for the reasonable  
12          costs and expenses of the activities undertaken by  
13          the Office to carry out the duty of the Director  
14          under paragraph (2), including the costs of examina-  
15          tions and overhead expenses.

16          (2) Annual assessments imposed by the Direc-  
17          tor shall be—

18                  (A) imposed prior to October 1 of each  
19                  year;

20                  (B) collected at such time or times during  
21                  each assessment year as determined necessary  
22                  or appropriate by the Director;

23                  (C) deposited into the Federal Housing  
24                  Enterprises Oversight Fund established by sec-



1           tion 1316(f) of the Housing and Community  
2           Development Act of 1992; and

3           (D) available, to the extent provided in ap-  
4           propriations Acts, for carrying out the Direc-  
5           tor's responsibilities under this section.

6 **SEC. 402. REGULATION OF THE SECRETARY OF HUD.**

7       Except for the authority of the Director of the Office  
8 of Federal Housing Enterprise Oversight as provided in  
9 section 401, the Secretary of Housing and Urban Develop-  
10 ment shall have general regulatory power over the Organi-  
11 zation and shall make such rules and regulations applica-  
12 ble to the Organization as determined necessary or appro-  
13 priate by the Secretary of Housing and Urban Develop-  
14 ment to ensure that the purposes of this Act are accom-  
15 plished.

16 **TITLE V—FORMATION OF NEW**  
17 **CORPORATION**

18 **SEC. 501. FORMATION OF NEW CORPORATION.**

19       (a) IN GENERAL.—In order to continue the accom-  
20 plishment of the purposes of this Act beyond the terms  
21 of the Federal charter of the Organization, the Board of  
22 Directors shall, not later than 10 years after the date of  
23 enactment of this Act, cause the formation of a new cor-  
24 poration under the laws of any Tribe, any State of the  
25 United States, or the District of Columbia.

1       (b) POWERS OF NEW CORPORATION NOT PRE-  
2       SCRIBED.—Except as provided in this section, the new  
3       corporation may have whatever corporate powers and at-  
4       tributes permitted under the laws of the jurisdiction of its  
5       incorporation which the Board of Directors shall deter-  
6       mine, in its business judgment, to be appropriate.

7       (c) USE OF NAFSO NAME PROHIBITED.—The new  
8       corporation may not use in any manner the names “Native  
9       American Financial Services Organization”, “NAFSO” or  
10      any variation of either thereof.

11      **SEC. 502. ADOPTION AND APPROVAL OF MERGER PLAN.**

12      (a) IN GENERAL.—Not later than [10] years after  
13      the date of enactment of this Act, the Board of Directors  
14      shall prepare, adopt, and submit to the Secretary of Hous-  
15      ing and Urban Development and the Secretary of the  
16      Treasury for approval, a plan for merging the Congres-  
17      sionally chartered Organization into the nonfederally char-  
18      tered new corporation.

19      (b) DESIGNATED MERGER DATE.—

20           (1) The Board of Directors shall establish the  
21      designated merger date in the merger plan as a spe-  
22      cific calendar date and time of day at which the  
23      merger of the Organization into the new corporation  
24      shall be effective.

1           (2) The Board of Directors may change the  
2           designated merger date in the merger plan by adopt-  
3           ing an amended plan of merger.

4           (3) Except as provided in paragraph (4), the  
5           designated merger date in the merger plan or any  
6           amended merger plan shall be not later than 11  
7           years after the date of enactment of this Act.

8           (4) The Board of Directors may adopt an  
9           amended plan of merger that designates a date later  
10          than 11 years after the date of enactment of this  
11          Act if the Board of Directors submits to both the  
12          Secretary of Housing and Urban Development and  
13          the Secretary of the Treasury a report—

14                (A) stating that an orderly merger of the  
15                Organization into the new corporation is not  
16                feasible before the last date designated by the  
17                Board of Directors;

18                (B) explaining why an orderly merger of  
19                the Organization into the new corporation is  
20                not feasible before the last date designated by  
21                the Board of Directors;

22                (C) describing the steps that have been  
23                taken to consummate an orderly merger of the  
24                Organization into the new corporation not later

1           than 11 years after the date of enactment of  
2           this Act; and

3                   (D) describing the steps that will be taken  
4           to consummate an orderly and timely merger of  
5           the Organization into the new corporation.

6           (5) In no case shall any date designated by the  
7           Board of Directors in an amended merger plan be  
8           later than 12 years after the date of enactment of  
9           this Act.

10           (6) In no case shall the consummation of an or-  
11           derly and timely merger of the Organization into the  
12           new corporation occur later than 13 years after the  
13           date of enactment of this Act.

14           (c) GOVERNMENTAL APPROVALS OF MERGER PLAN  
15           REQUIRED.—The merger plan or any amended merger  
16           plan shall not be effective until it has been approved by  
17           both the Secretary of Housing and Urban Development  
18           and the Secretary of the Treasury.

19           (d) REVISION OF DISAPPROVED MERGER PLAN RE-  
20           QUIRED.—If either the Secretary of Housing and Urban  
21           Development or the Secretary of the Treasury, or both,  
22           disapprove the merger plan or any amended merger plan,  
23           the disapproving Secretary or Secretaries shall so notify  
24           the Organization and indicate the reasons for that dis-  
25           approval, and the Organization shall submit to the Sec-

1 retary or Secretaries an amended merger plan responsive  
2 to such reasons within 30 days from the date of notifica-  
3 tion of disapproval.

4 (e) NO STOCKHOLDER APPROVAL OF MERGER PLAN  
5 REQUIRED.—No approval or consent of the stockholders  
6 of the Organization shall be required to accomplish the  
7 merger of the Organization into the new corporation.

8 **SEC. 503. CONSUMMATION OF MERGER.**

9 The Board of Directors shall cause the merger of the  
10 Organization into the new corporation to be accomplished  
11 according to the merger plan approved by the Secretary  
12 of Housing and Urban Development and the Secretary of  
13 the Treasury and all applicable requirements of the law  
14 of the jurisdiction of incorporation of the new corporation.

15 **SEC. 504. TRANSITION.**

16 (a) CONTINUATION OF RIGHTS, DUTIES, AND RE-  
17 STRICTIONS.—Except as provided in this section, the Or-  
18 ganization shall, during the transition period, continue to  
19 have all of the rights, privileges, duties, and obligations,  
20 and be subject to all of the limitations and restrictions,  
21 set forth in this Act.

22 (b) COLLATERALIZATION OF OUTSTANDING OBLIGA-  
23 TIONS.—The Organization shall provide for all debt obli-  
24 gations of the Organization which are outstanding on the  
25 day before the designated merger date to be secured as

1 to principal and interest by obligations of the United  
2 States held in trust for the holders of such obligations.  
3 The collateralization and the trust shall be subject to such  
4 requirements, terms and conditions as the Secretary of the  
5 Treasury deems necessary or appropriate.

6 (c) ISSUANCE OF NEW OBLIGATIONS DURING TRANSITION PERIOD.—As needed to carry out the purposes for  
7 which it was formed, the Organization may, during the  
8 transition period, continue to issue obligations under section 303,  
9 provided that any new obligation issued during  
10 the transition period shall mature before the designated  
11 merger date.  
12

13 **SEC. 505. EFFECT OF MERGER.**

14 (a) TRANSFER OF ASSETS AND LIABILITIES.—

15 (1) At the designated merger date, all property,  
16 real, personal, and mixed, and all debts due on  
17 whatever account, and all other choses in action and  
18 all and every other interest of or belonging to or due  
19 to the Organization shall be transferred to and vested  
20 in the new corporation without further act or  
21 deed, and title to any property, whether real, personal,  
22 or mixed, shall not in any way be impaired by  
23 reason of the merger.

24 (2) At the designated merger date, the new corporation  
25 shall be responsible and liable for all obligations

1        tions and liabilities of the Organization and neither  
2        the rights of creditors nor any liens upon the prop-  
3        erty of the Organization shall be impaired by the  
4        merger.

5        (b) TERMINATION OF THE ORGANIZATION AND ITS  
6        FEDERAL CHARTER.—At the designated merger date, the  
7        surviving corporation of the merger shall be the new cor-  
8        poration, the Federal charter of the Organization shall  
9        terminate, and the separate existence of the Organization  
10       shall terminate.

11       (c) REFERENCES TO THE ORGANIZATION IN ACTS OF  
12       CONGRESS.—From and after the designated merger date,  
13       any reference to the Organization in any Act of Congress  
14       [or in any rule or regulation promulgated under any Act  
15       of Congress] shall not be deemed to refer to the new cor-  
16       poration.

17       (d) SAVINGS CLAUSE.—

18            (1) The merger of the Organization into the  
19       new corporation shall not abate any proceeding com-  
20       menced by or against the Organization before the  
21       designated merger date, except that the new cor-  
22       poration shall be substituted for the Organization as  
23       a party to any such proceeding as of the designated  
24       merger date.

1           (2) All contracts and agreements to which the  
2       Organization is a party and which are in effect on  
3       the day before the designated merger date shall con-  
4       tinue in effect according to their terms, except that  
5       the new corporation shall be substituted for the Or-  
6       ganization as a party to those contracts and agree-  
7       ments as of the designated merger date.

## 8       **TITLE VI—AUTHORIZATIONS OF** 9       **APPROPRIATIONS**

### 10   **SEC. 601. AUTHORIZATION OF APPROPRIATIONS FOR NA-** 11           **TIVE AMERICAN FINANCIAL INSTITUTIONS.**

12       There is authorized to be appropriated, without fiscal  
13   year limitation, to the Fund \$20,000,000 to provide finan-  
14   cial assistance to Native American Financial Institutions.  
15   To the extent that a Native American Financial Institu-  
16   tion receives a portion of such appropriation, such monies  
17   shall not be considered as matching funds required of the  
18   Native American Financial Institution under the Commu-  
19   nity Development Banking and Financial Institutions Act.

### 20   **SEC. 602. AUTHORIZATION OF APPROPRIATIONS FOR OR-** 21           **GANIZATION.**

22       The Secretary of Housing and Urban Development  
23   is authorized, to the extent and in the amounts provided  
24   in advance in appropriation Acts, to provide up to  
25   \$10,000,000 to the Fund for the funding of a cooperative



1 agreement to be entered into by the Fund and the Organi-  
2 zation for technical assistance and other services to be  
3 provided by the Organization to the Native American Fi-  
4 nancial Institutions.



S 2487 IS—2

S 2487 IS—3

S 2487 IS—4